

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN SENATE JUNE 3, 2014

AMENDED IN SENATE MARCH 18, 2014

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY MAY 28, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 26

Introduced by Assembly Member Bonilla

(Coauthor: Senator Hueso)

December 3, 2012

An act to amend Section 1720 of, ~~and to add Section 1720.7 to,~~ the Labor Code, relating to prevailing wage.

LEGISLATIVE COUNSEL’S DIGEST

AB 26, as amended, Bonilla. Construction: prevailing wage.

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages. Existing law generally defines “public works” to include construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds. Existing law defines “construction” for these purposes to include work performed during the design and preconstruction phases of construction. Existing law makes a willful

violation of laws relating to payment of prevailing wages on public works a misdemeanor.

This bill would revise the definition of “construction” to also include work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. ~~The bill would also expand the definition of “public works,” for the purposes of requirements regarding the payment of prevailing wages, to also include any task relating to the collecting or sorting, or both, of refuse or recyclable metals, such as copper, steel, and aluminum, performed at a public works jobsite.~~ By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1720 of the Labor Code is amended to
2 read:
3 1720. (a) As used in this chapter, “public works” means:
4 (1) Construction, alteration, demolition, installation, or repair
5 work done under contract and paid for in whole or in part out of
6 public funds, except work done directly by any public utility
7 company pursuant to order of the Public Utilities Commission or
8 other public authority. For purposes of this paragraph,
9 “construction” includes work performed during the design and
10 preconstruction phases of construction, including, but not limited
11 to, inspection and land surveying work, and work performed during
12 the postconstruction phases of construction, including, but not
13 limited to, all cleanup work at the jobsite. For purposes of this
14 paragraph, “installation” includes, but is not limited to, the
15 assembly and disassembly of freestanding and affixed modular
16 office systems.
17 (2) Work done for irrigation, utility, reclamation, and
18 improvement districts, and other districts of this type. “Public
19 work” does not include the operation of the irrigation or drainage

1 system of any irrigation or reclamation district, except as used in
2 Section 1778 relating to retaining wages.

3 (3) Street, sewer, or other improvement work done under the
4 direction and supervision or by the authority of any officer or
5 public body of the state, or of any political subdivision or district
6 thereof, whether the political subdivision or district operates under
7 a freeholder's charter or not.

8 (4) The laying of carpet done under a building lease-maintenance
9 contract and paid for out of public funds.

10 (5) The laying of carpet in a public building done under contract
11 and paid for in whole or in part out of public funds.

12 (6) Public transportation demonstration projects authorized
13 pursuant to Section 143 of the Streets and Highways Code.

14 (b) For purposes of this section, "paid for in whole or in part
15 out of public funds" means all of the following:

16 (1) The payment of money or the equivalent of money by the
17 state or political subdivision directly to or on behalf of the public
18 works contractor, subcontractor, or developer.

19 (2) Performance of construction work by the state or political
20 subdivision in execution of the project.

21 (3) Transfer by the state or political subdivision of an asset of
22 value for less than fair market price.

23 (4) Fees, costs, rents, insurance or bond premiums, loans, interest
24 rates, or other obligations that would normally be required in the
25 execution of the contract, that are paid, reduced, charged at less
26 than fair market value, waived, or forgiven by the state or political
27 subdivision.

28 (5) Money loaned by the state or political subdivision that is to
29 be repaid on a contingent basis.

30 (6) Credits that are applied by the state or political subdivision
31 against repayment obligations to the state or political subdivision.

32 (c) Notwithstanding subdivision (b):

33 (1) Private residential projects built on private property are not
34 subject to the requirements of this chapter unless the projects are
35 built pursuant to an agreement with a state agency, redevelopment
36 agency, or local public housing authority.

37 (2) If the state or a political subdivision requires a private
38 developer to perform construction, alteration, demolition,
39 installation, or repair work on a public work of improvement as a
40 condition of regulatory approval of an otherwise private

1 development project, and the state or political subdivision
2 contributes no more money, or the equivalent of money, to the
3 overall project than is required to perform this public improvement
4 work, and the state or political subdivision maintains no proprietary
5 interest in the overall project, then only the public improvement
6 work shall thereby become subject to this chapter.

7 (3) If the state or a political subdivision reimburses a private
8 developer for costs that would normally be borne by the public,
9 or provides directly or indirectly a public subsidy to a private
10 development project that is de minimis in the context of the project,
11 an otherwise private development project shall not thereby become
12 subject to the requirements of this chapter.

13 (4) The construction or rehabilitation of affordable housing units
14 for low- or moderate-income persons pursuant to paragraph (5) or
15 (7) of subdivision (e) of Section 33334.2 of the Health and Safety
16 Code that are paid for solely with moneys from the Low and
17 Moderate Income Housing Fund established pursuant to Section
18 33334.3 of the Health and Safety Code or that are paid for by a
19 combination of private funds and funds available pursuant to
20 Section 33334.2 or 33334.3 of the Health and Safety Code do not
21 constitute a project that is paid for in whole or in part out of public
22 funds.

23 (5) “Paid for in whole or in part out of public funds” does not
24 include tax credits provided pursuant to Section 17053.49 or 23649
25 of the Revenue and Taxation Code.

26 (6) Unless otherwise required by a public funding program, the
27 construction or rehabilitation of privately owned residential projects
28 is not subject to the requirements of this chapter if one or more of
29 the following conditions are met:

30 (A) The project is a self-help housing project in which no fewer
31 than 500 hours of construction work associated with the homes
32 are to be performed by the home buyers.

33 (B) The project consists of rehabilitation or expansion work
34 associated with a facility operated on a not-for-profit basis as
35 temporary or transitional housing for homeless persons with a total
36 project cost of less than twenty-five thousand dollars (\$25,000).

37 (C) Assistance is provided to a household as either mortgage
38 assistance, downpayment assistance, or for the rehabilitation of a
39 single-family home.

1 (D) The project consists of new construction, expansion, or
2 rehabilitation work associated with a facility developed by a
3 nonprofit organization to be operated on a not-for-profit basis to
4 provide emergency or transitional shelter and ancillary services
5 and assistance to homeless adults and children. The nonprofit
6 organization operating the project shall provide, at no profit, not
7 less than 50 percent of the total project cost from nonpublic
8 sources, excluding real property that is transferred or leased. Total
9 project cost includes the value of donated labor, materials,
10 architectural, and engineering services.

11 (E) The public participation in the project that would otherwise
12 meet the criteria of subdivision (b) is public funding in the form
13 of below-market interest rate loans for a project in which
14 occupancy of at least 40 percent of the units is restricted for at
15 least 20 years, by deed or regulatory agreement, to individuals or
16 families earning no more than 80 percent of the area median
17 income.

18 (d) Notwithstanding any provision of this section to the contrary,
19 the following projects shall not, solely by reason of this section,
20 be subject to the requirements of this chapter:

21 (1) Qualified residential rental projects, as defined by Section
22 142(d) of the Internal Revenue Code, financed in whole or in part
23 through the issuance of bonds that receive allocation of a portion
24 of the state ceiling pursuant to Chapter 11.8 of Division 1
25 (commencing with Section 8869.80) of the Government Code on
26 or before December 31, 2003.

27 (2) Single-family residential projects financed in whole or in
28 part through the issuance of qualified mortgage revenue bonds or
29 qualified veterans' mortgage bonds, as defined by Section 143 of
30 the Internal Revenue Code, or with mortgage credit certificates
31 under a Qualified Mortgage Credit Certificate Program, as defined
32 by Section 25 of the Internal Revenue Code, that receive allocation
33 of a portion of the state ceiling pursuant to Chapter 11.8 of Division
34 1 (commencing with Section 8869.80) of the Government Code
35 on or before December 31, 2003.

36 (3) Low-income housing projects that are allocated federal or
37 state low-income housing tax credits pursuant to Section 42 of the
38 Internal Revenue Code, Chapter 3.6 of Division 31 (commencing
39 with Section 50199.4) of the Health and Safety Code, or Section

1 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on
2 or before December 31, 2003.

3 (e) If a statute, other than this section, or a regulation, other than
4 a regulation adopted pursuant to this section, or an ordinance or a
5 contract applies this chapter to a project, the exclusions set forth
6 in subdivision (d) do not apply to that project.

7 (f) For purposes of this section, references to the Internal
8 Revenue Code mean the Internal Revenue Code of 1986, as
9 amended, and include the corresponding predecessor sections of
10 the Internal Revenue Code of 1954, as amended.

11 (g) The amendments made to this section by either Chapter 938
12 of the Statutes of 2001 or the act adding this subdivision shall not
13 be construed to preempt local ordinances requiring the payment
14 of prevailing wages on housing projects.

15 ~~SEC. 2. Section 1720.7 is added to the Labor Code, to read:~~

16 ~~1720.7. For the limited purposes of Article 2 (commencing~~
17 ~~with Section 1770), “public works” also means any task relating~~
18 ~~to the collecting or sorting, or both, of refuse or recyclable metals,~~
19 ~~such as copper, steel, and aluminum, performed at a public works~~
20 ~~jobsite.~~

21 ~~SEC. 3.~~

22 ~~SEC. 2.~~ No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.